## BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

MARION S. COLLINS	)
Claimant	)
VS.	)
	) Docket No. 214,499
STATE OF KANSAS	)
Respondent	)
AND	)
	)
STATE SELF-INSURANCE FUND	)
Insurance Carrier	)

## ORDER

The State Self-Insurance Fund requested review of the preliminary hearing order dated October 14, 1997, entered by Administrative Law Judge Robert H. Foerschler.

## Issues

The Administrative Law Judge awarded claimant medical and temporary total disability benefits. The only issues the State Self-Insurance Fund raised for Appeals Board review were whether claimant's present need for medical treatment is the result of an accident which arose out of and in the course of his employment with the respondent and whether the Administrative Law Judge exceeded his jurisdiction by ordering payment of temporary total disability benefits.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, for preliminary hearing purposes the Appeals Board finds as follows:

The preliminary hearing order should be affirmed.

The issue whether claimant's present need for medical treatment is the result of an accident which arose out of and in the course of employment with the respondent was not raised before the Administrative Law Judge at the preliminary hearing in question and, therefore, the Appeals Board is without authority at this time to address it. See K.S.A. 44-555c, as amended.

Although the Appeals Board is without jurisdiction at this stage of the proceeding to reweigh the evidence to determine if claimant should be considered temporarily and totally disabled, under K.S.A. 44-551, as amended, the Appeals Board can address the issue whether the Administrative Law Judge exceeded his authority in awarding the payment of temporary total disability benefits. The Appeals Board finds the Administrative Law Judge did not exceed his authority by ordering payment of those benefits. The preliminary hearing statute, K.S.A. 44-534a, specifically empowers an administrative law judge to order temporary total disability benefits.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing order dated October 14, 1997, entered by Administrative Law Judge Robert H. Foerschler should be, and hereby is, affirmed.

I IS SO ORDERED.
Dated this day of December 1997.
BOARD MEMBER

c: Leah Brown Burkhead, Mission, KS Jeff K. Cooper, Topeka, KS Robert H. Foerschler, Administrative Law Judge Philip S. Harness, Director